

Agency 121

Department of Credit Unions

Articles

- 121-1. LOW-INCOME/COMMUNITY DEVELOPMENT CREDIT UNIONS.
- 121-2. BUSINESS RECOVERY—CONTINGENCY PLANNING.
- 121-3. CREDIT UNION SERVICES ORGANIZATION (CUSO).
- 121-4. TRUST SUPERVISION.
- 121-5. CREDIT UNION DETERIORATING CONDITION.
- 121-6. REPORTING PLACE OF BUSINESS FOR CREDIT UNIONS.
- 121-7. INCIDENTAL POWERS OF CREDIT UNIONS.
- 121-8. CREDIT UNION UNSAFE AND UNSOUND PRACTICES.
- 121-9. FOREIGN CREDIT UNIONS.
- 121-10. CREDIT UNION ANNUAL AUDIT REQUIREMENTS.

Article 1.—LOW-INCOME/COMMUNITY DEVELOPMENT CREDIT UNIONS

121-1-1. Low-income credit union non-member shares. (a) Designation of low-income status. A credit union may apply to the administrator for designation as a low-income credit union. A credit union may be designated by the administrator as a low-income credit union if the administrator determines that it is in the public interest that the administrator designate the credit union as a low-income credit union and that:

(1) a majority of members of the credit union are low-income members; or

(2) the credit union's field of membership is limited to geographic areas in which the majority of the residents, if members of the credit union, would be low-income members.

(b) Requirements. A credit union designated by the administrator as a "low-income credit union" may accept payments on shares from non-members of the credit union only if:

(1) the credit union has adopted and follows a written plan meeting the requirements of K.A.R. 121-1-1(e);

(2) the administrator approves the plan;

(3) at or before the time the credit union first receives a payment on shares from any non-member, and annually thereafter, the credit union provides to each non-member shareholder a written share account disclosure statement meeting the requirements of K.A.R. 121-1-1(f);

(4) except as provided in K.A.R. 121-1-1(g),

the maximum amount of non-member shares outstanding at any time does not exceed 20 percent of the total shares of the credit union or \$1,500,000, whichever is greater; and

(5) the administrator has not revoked the designation of the credit union as a "low-income credit union."

(c) Maturity. Shares from non-members may be issued either with a fixed maturity not to exceed five years or without a fixed maturity. For shares issued without a fixed maturity, the terms of account required by K.A.R. 121-1-1(e) shall provide the credit union with the right to require up to 60 days advance notice before such shares may be withdrawn from the credit union.

(d) Uses. Except as limited by K.A.R. 121-1-1(g), a low-income credit union may use the payments on shares from non-members for any purpose permitted by law.

(e) Plan for non-member shares. Each plan for non-member shares shall include:

(1) a detailed statement specifying the credit union's need for, amount of, and sources and intended uses of non-member shares;

(2) the terms of the account, including maturity, dividend rate and calculation disclosures, withdrawal restrictions, and balance requirements;

(3) the credit union's loan and investment policies;

(4) the credit union's latest income statement and balance sheet;

(5) a pro forma income statement and balance

sheet reflecting the issuance and uses of the amount of non-member shares specified in K.A.R. 121-1-1(e)(1); and

(6) a copy of the credit union's proposed disclosure statement meeting the requirements of K.A.R. 121-1-1(f).

(f) Required disclosure. Each non-member share account disclosure statement shall include:

(1) a statement that non-member shares do not provide the owner with membership or voting rights in the credit union;

(2) a statement that non-member shares are subject to the same statutory provisions as other shares of the credit union, including:

(A) the credit union's lien and right of set-off on non-member shares and dividends thereon;

(B) the proportionate reduction in the liability of the credit union to shareholders in accordance with the provisions of K.S.A. 17-2225 and amendments thereto;

(C) the priority in liquidation or dissolution of the credit union; and

(D) limitations on the credit union's ability to pay dividends; and

(3) the terms of the non-member share account, including the maturity, dividend rate and calculation disclosure, withdrawal restrictions and account balance requirements.

(g) Authority to receive additional payment on non-member shares. A low-income credit union may accept payments on shares from non-members in excess of the limitations provided in K.A.R. 121-1-1(b)(4) only if:

(1) the amounts in excess of the limits imposed by K.A.R. 121-1-1(b)(4) are used to fund loans to members; and

(2) the maximum amount of non-member shares outstanding at any time does not exceed \$5,000,000.

(h) Removal of designation as low-income credit union.

(1) The designation of a credit union as a low-income credit union may be removed by the administrator:

(A) at the request of the credit union if the administrator determines that such action will not adversely affect the members of the credit union and that such action would be in the public interest; or

(B) if, following notice to the credit union and the opportunity for a hearing, the administrator determines that the credit union no longer meets the criteria to be a low-income credit union and

that removal of the designation is in the public interest.

(2) Immediately following the removal of the designation as a low-income credit union, the credit union shall give written notice to all members of the removal of the designation.

(i) Redemption of non-member shares. If the designation as a low-income credit union is removed in accordance with K.A.R. 121-1-1(h), the credit union shall give written notice to each non-member shareholder:

(1) that the credit union is no longer eligible to receive payments on shares from non-members;

(2) that all non-member share accounts will be closed;

(3) that all shares of non-members will be redeemed without any early withdrawal penalty; and

(4) of the date of the redemption. The redemption date shall be as follows.

(A) The redemption date for shares issued either with a fixed maturity or with a notice period prior to withdrawal, shall be no later than the maturity date of such shares, or if the non-member gives or has given the required notice of withdrawal, the date on which such shares would be redeemed in accordance with the terms of the account for such shares, or 90 days after the effective date of removal of the designation as a low-income credit union, whichever occurs first;

(B) The redemption rate for shares issued without a fixed maturity shall be no later than the date the non-member requests withdrawal of such shares in accordance with the terms of account for such shares, or 90 days after the effective date of removal of the designation as a low-income credit union, whichever occurs first. (Authorized by K.S.A. 1994 Supp. 17-2204, as amended by 1995 SB 33, Sec. 1; implementing K.S.A. 1994 Supp. 17-2231, as amended by 1995 SB 33, Sec. 2; effective Sept. 15, 1995.)

Article 2.—BUSINESS RECOVERY— CONTINGENCY PLANNING

121-2-1. Contingency plan. (a) Plan establishment. Each credit union's board of directors shall develop and maintain a current written contingency and business recovery plan, which shall be referred to as "the plan" in this regulation, meeting the requirements of subsection (b). The plan shall provide an established basis for action if the credit union is affected by a disaster,

whether natural, human, or technical, that causes a disruption of operations.

(b) Plan requirements. The plan shall establish specific processes and procedures to ensure a timely resumption of services and minimize financial loss to the credit union. The plan shall meet the following requirements:

(1) Identify critical products and services, including physical, technical, and human, provided by the credit union and by third-party service providers;

(2) identify, assess, and prioritize the credit union's exposure to specific and general risks, including the failure of credit union operating systems and the interruption of service from third-party service providers;

(3) state the key assumptions on which the plan is predicated;

(4) state the credit union's response to each identified risk, including steps to minimize the potential impact of the disruption;

(5) address data reconstruction and provide for secure and remote backup storage of data files, programs, and records;

(6) state the alternative responses to each event that could cause the interruption of service, if the credit union's response is dependent upon the anticipated duration of the service interruption;

(7) provide for the relocation of the credit union, recovery of necessary data and operating systems, and resumption of key or critical products and services; and

(8) provide for alternate methods to communicate with employees, members, business partners, third-party vendors, the news media, regulators, and other outside parties.

(c) Testing. Each credit union's board of directors shall annually conduct one or more operational tests of the plan for each identified key or critical product or service. The board of directors shall document the results of the test or tests, including identified weaknesses and corrective action taken.

(d) Plan review. Each credit union's board of directors shall at least annually review and approve the plan. The review and approval shall be reflected in the minutes of the credit union. (Authorized by K.S.A. 2006 Supp. 17-2206(a) and K.S.A. 17-2260; implementing K.S.A. 2006 Supp. 17-2206(a); effective June 21, 1996; amended Dec. 28, 2007.)

Article 3.—CREDIT UNION SERVICES ORGANIZATION (CUSO)

121-3-1. Credit union services organization (CUSO). (a) Organization. The board of directors of a credit union may invest in or make loans to a CUSO only if the CUSO is legally established under Kansas law as a corporation, a limited partnership, or a limited liability company, is operated as a legal entity separate from the credit union, and meets the following requirements:

(1) Ensuring that the CUSO's business transactions, accounts, and records are not intermingled with those of an investing or lending credit union;

(2) observing the formalities of the CUSO's separate corporate procedures;

(3) ensuring that the CUSO is adequately financed as a separate entity for obligations reasonably foreseeable in a business of its size and character;

(4) identifying the CUSO to the public as an enterprise separate from the investing or lending credit union;

(5) not operating as a department of an investing or lending credit union; and

(6) in the absence of a credit union-guaranteed loan to the CUSO, ensuring that all borrowings by the CUSO indicate that the credit union is not liable for an amount greater than the credit union's loan or investment to the CUSO.

(b) In order to document and verify the required separation, the board of directors of each investing credit union and the board of directors of each lending credit union that intends to invest in or loan to a CUSO on or after February 1, 2008 shall obtain a written legal advice or opinion regarding whether the CUSO is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or lent to, the CUSO. The written advice or opinion shall also address the following factors:

(1) Whether the legal identity of the CUSO is separate from that of the investing or lending credit union;

(2) whether the boards of directors and employees are persons in common;

(3) whether one entity has control over the other; and

(4) whether separate books and records are maintained.

(c) Investments and loans. The board of direc-

tors of a credit union may invest in or make loans to a CUSO if all of the following conditions are met:

(1) The CUSO engages only in permissible operational and financial services that are primarily provided to the investing or lending credit union, the investing or lending credit union's members, or another credit union and its members.

(2) The investing or lending credit union requires notification by the CUSO when a change in CUSO capital stock or ownership that is greater than 51 percent occurs.

(3) The CUSO does not engage in activities prohibited by subsections (e) or (f).

(4) The CUSO complies with subsections (g), (h), and (i).

(d) Permissible services. The board of directors of a credit union may invest in or make loans to a CUSO that provides one or more of the following general services:

- (1) Checking and currency services;
- (2) clerical, professional, and management services;
- (3) electronic transaction services;
- (4) financial counseling services;
- (5) loan support services;
- (6) record retention, security, and disaster recovery services;
- (7) shared credit union branch or service center operations; or
- (8) trust and trust-related services.

Each CUSO's president or chief executive officer shall ensure the CUSO's compliance with applicable federal, state, and local laws when engaging in any of the services specified in paragraphs (d)(1) through (8). Each service that is not authorized in paragraphs (d)(1) through (8) shall be required to be approved by the administrator of the Kansas department of credit unions as a financial or operational service before a CUSO may offer that service. Each request for approval shall include a full explanation of the proposed service and how that service would provide a financial or operational benefit to the investing or lending credit union, the investing or lending credit union's members, or another credit union and its members.

(e) Prohibited activities. The board of directors of a credit union shall not invest in or make loans to a CUSO that has acquired control, directly or indirectly, of another financial institution or has invested in shares, stocks, or obligations of an insurance company, trade association, liquidity fa-

cility, or similar organization. The board of directors of a credit union shall not engage in any activity, contract for, or enter into any form or manner of arrangement with a CUSO that would cause the credit union to be committed or liable for an amount in excess of its investment in or loan to the CUSO.

(f) Conflict of interest.

(1) For purposes of this subsection, the following definitions shall apply:

(A) "Official" means a director or committee member of a credit union.

(B) "Senior management employee" means a chief executive officer, assistant chief executive officer, or chief financial officer of a credit union. This term shall include the president, treasurer, manager, assistant president, vice president, assistant treasurer, and assistant manager of a credit union.

(C) "Immediate family member" means a spouse, parent, adult sibling, or other family member who lives in the same household.

(2) An official or senior management employee of a credit union that invests in or makes loans to a CUSO, and any immediate family member of the individual, shall not receive any salary, commission, investment income, or other income or compensation from a CUSO either directly or indirectly, or from any person being served through the CUSO. This paragraph shall not prohibit an official or senior management employee of a credit union from providing occasional minor assistance in the operation of a CUSO, if the individual is not compensated by the CUSO. The CUSO may reimburse the credit union for the services provided by the officials and senior management employees only if the account receivable of the credit union due from the CUSO is paid in full at least every 60 days.

All transactions with business associates or with individuals not specifically prohibited by paragraph (f)(1)(C) shall be conducted at arm's length and in the interest of the credit union.

(g) Accounting procedures. The board of directors of each credit union shall follow generally accepted accounting principles to record any investment in, loan to, or other transactions with a CUSO. The CUSO's president or chief executive officer shall agree in writing with any credit union for which the CUSO provides financial or operational services to follow generally accepted accounting principles.

(h) Financial statements. The board of directors

of each credit union shall obtain the following from any CUSO with which the credit union has an outstanding loan or investment:

(1) A certified public accountant's opinion audit of the CUSO's financial statements conducted in accordance with generally accepted auditing standards on at least an annual basis; and

(2) quarterly financial statements, including a balance sheet and income statement.

(i) Access to records. The board of directors of a credit union shall not invest in or make loans to a CUSO whose chief executive officer has not agreed, in writing, with that credit union's board of directors to provide representatives of the Kansas department of credit unions with complete access to any of the books and records of the CUSO as the administrator may request. (Authorized by K.S.A. 2006 Supp. 17-2204a, as amended by L. 2007, ch. 71, sec. 1, and K.S.A. 17-2260; implementing K.S.A. 17-2204a, as amended by L. 2007, ch. 71, sec. 1; effective Oct. 11, 1996; amended Dec. 28, 2007.)

Article 4.—TRUST SUPERVISION

121-4-1. Definitions. For the purposes of this article, the following definitions shall apply: (a) "Account" means the trust or other fiduciary relationship which has been established with the corporate credit union.

(b) "Collective investment fund" means funds held by a corporate credit union as fiduciary and invested collectively in either of the following types of funds:

(1) a common trust fund maintained by the corporate credit union exclusively for the collective investment and reinvestment of moneys contributed to the fund by the corporate credit union in its capacity as trustee; or

(2) a fund consisting solely of assets of retirement, pension, profit-sharing, stock bonus or other trusts, if all such assets are only from retirement, pension, profit-sharing, stock bonus or other trusts that provide the corporate credit union with a certification of exemption from federal income tax under the internal revenue code.

(c) "Corporate credit union" means a corporate credit union as defined in K.S.A. 17-2231 which has been authorized by the administrator, pursuant to K.A.R. 121-4-2, to exercise fiduciary powers.

(d) "Fiduciary" means a corporate credit union undertaking to act alone or jointly with others pri-

marily for the benefit of another in all matters connected with its undertaking as trustee.

(e) "Fiduciary powers" means the powers of a trustee to act as specified in the instrument establishing the trust.

(f) "Fiduciary records" means all documents which are written, transcribed, recorded, received or otherwise come into possession of a corporate credit union and which are necessary to preserve information concerning the acts and events relevant to the exercise of fiduciary powers by a corporate credit union.

(g) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

(h) "Investment discretion" means the authority of a corporate credit union, as trustee, to determine what securities, property, or other investments will be purchased or sold by or for an account.

(i) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity.

(1) The term security includes the following:

(A) any stock, bond, note, debenture, or evidence of indebtedness; or

(B) any participation in or right to subscribe to or purchase any of these instruments.

(2) The term "security" does not include:

(A) any deposit or share account in a federally or state- insured bank or credit union;

(B) any loan participation;

(C) any letter of credit or other form of corporate credit union indebtedness incurred in the ordinary course of business;

(D) currency;

(E) any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal of such an instrument with a maturity which is likewise limited;

(F) units of a collective investment fund; or

(G) U.S. savings bonds.

(j) "Trust committee" means:

(1) the board of directors of the corporate credit union; or

(2) any committee of the board charged, by the board of directors, with the responsibility for administration and supervision of the trust activities

of the corporate credit union. The trust committee may assign authority to other committees or individuals, as necessary and appropriate to carry out the committee's responsibility. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-2. Authorization. (a) Upon application to and approval by the administrator, any corporate credit union may exercise fiduciary powers with respect to any trust established by or for the benefit of one or more shareholders of the corporate credit union.

(b) A trust may be and remain a member of a corporate credit union if:

(1) The persons eligible for membership in the corporate credit union include trusts for which the corporate credit union exercises fiduciary powers;

(2) the corporate credit union is the trustee for the trust;

(3) the instrument creating the trust irrevocably waives the right of the trust, as a member of the corporate credit union, to vote at any meeting of members and irrevocably instructs the trustee to not vote for or on behalf of the trust at any meeting of members; and

(4) the trust is admitted into membership by and complies with any membership requirements of the corporate credit union. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-3. Administration of fiduciary powers. (a) The board of directors of each corporate credit union shall be responsible for the proper exercise of fiduciary powers by the corporate credit union.

(1) The board of directors of each corporate credit union shall be responsible for all matters pertinent to the proper exercise of fiduciary powers, including determining policies, investing and disposing of property held in a fiduciary capacity, and directing and reviewing the actions of all officers, employees, and committees utilized by the corporate credit union in the exercise of its fiduciary powers.

(2) In discharging this responsibility, the board of directors may assign the administration of any of the corporate credit union's fiduciary powers to any designated officer, employee, or committee. The board of directors shall make such an assignment by action of the board duly entered in its minutes.

(3) A corporate credit union shall not accept an

account without the prior approval of the board, or the board's designee. Each corporate credit union shall make a written record of the acceptance of each account and of the relinquishment or closing of any account. Each corporate credit union shall, upon the acceptance of an account, promptly verify that assets received have been properly placed on accounting records and documented. The board shall ensure that at least once during every calendar year, and within 15 months of the last review, all assets held in fiduciary accounts where the corporate credit union has investment discretion, are reviewed to determine the advisability of retaining or disposing of such assets.

(b) The trust committee of each corporate credit union shall:

(1) consist of at least three directors;

(2) keep minutes of its actions, and if not comprised of the entire board of directors, periodically report its actions to the board of directors; and

(3) ensure that each officer and employee exercising investment discretion is bonded.

(c) Each corporate credit union exercising fiduciary powers shall designate, employ or retain legal counsel who shall be readily available to review fiduciary matters and to advise the corporate credit union.

(d) Each corporate credit union exercising fiduciary powers shall adopt written policies and procedures to ensure that each decision or recommendation to purchase or sell any security complies with the applicable federal and state securities laws. Such policies and procedures shall ensure that the corporate credit union does not use material inside information in connection with any decision or recommendation to purchase or sell any security. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-4. Books and accounts. (a) Each corporate credit union exercising fiduciary powers shall retain fiduciary records which shall be kept separate and distinct from other records of the corporate credit union.

(b) Each corporate credit union shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(c) Each corporate credit union shall keep a record of all written complaints and related correspondence concerning any account.

(d) Each corporate credit union shall retain the

records required by this article for such periods of time as shall be specified in a records retention policy adopted by the corporate credit union and approved by the administrator. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-5. Audit of trust activities. (a) At least once each calendar year, each corporate credit union's supervisory committee shall cause an audit to be made of the books, records, funds and investments held in accounts. The audit shall be made by an independent certified public accountant. The supervisory committee shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the administrator. A report of each audit shall be provided to the board of directors.

(b) Each account subject to this article shall be exempt from the certification requirements of K.S.A. 17-2211(e). (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-6. Funds awaiting investment or distribution. (a) Funds in an account which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(1) Each corporate credit union exercising fiduciary powers shall adopt and follow written policies and procedures intended to provide a rate of return on investment of funds in an account that is:

(A) prudent given the rate of return available for trust-quality, short-term investments; and

(B) consistent with the requirements of the governing instrument and local laws.

(2) These policies and procedures shall take into consideration all relevant factors, including the following:

(A) the anticipated return that could be obtained while the cash remains uninvested or undistributed;

(B) the cost of investing the funds;

(C) the anticipated need for the funds; and

(D) the costs and operational complexities of implementing and maintaining the investments for the corporate credit union.

(b)(1) Any corporate credit union may invest funds it holds in trust which are awaiting investment or distribution in the share or share certificate accounts of the corporate credit union when:

(A) the trust is a member of the corporate credit union; and

(B) the instrument creating the trust does not prohibit such an investment.

(2) Except as provided in paragraph (3), the maximum amount of funds in an account that may be invested in share or share certificate accounts of the corporate credit union shall be an amount equal to the insurance coverage provided by the national credit union share insurance fund for such accounts.

(3) If the instrument creating the trust expressly authorizes investments in such share and share certificate accounts and also specifies the maximum amount or percentage of trust assets that may be invested in such share and share certificate accounts, the corporate credit union may invest an amount up to the maximum amount specified in the instrument creating the trust. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-7. Investment of funds held as fiduciary. Funds held in an account shall be invested in accordance with any one or more of the following:

(a) the instrument establishing the fiduciary relationship;

(b) any and all applicable Kansas statutes and regulations, including K.S.A. 17-5004, and K.A.R. 121-4-10 and amendments thereto. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-8. Self-dealing. (a) Unless lawfully authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, a corporate credit union shall not invest funds from an account in stock or obligations of, or property acquired from any of the following:

(1) the corporate credit union, or its directors, officers, or employees, or from individuals associated with such persons;

(2) organizations in which there exists an interest which might affect the exercise of the best judgment of the corporate credit union in acquiring the property; or

(3) affiliates of the corporate credit union, or their directors, officers or employees.

(b) Except as provided in subsection (c), property held by a corporate credit union as fiduciary shall not be sold at private sale or transferred, by loan, or otherwise to any of the following:

(1) the corporate credit union, or its directors,

officers, or employees, or any individual associated with such persons;

(2) organizations in which there exists an interest which might affect the exercise of the best judgment of the corporate credit union in selling or transferring the property; or

(3) affiliates of the corporate credit union or their directors, officers or employees.

(c) Subsection (b) shall not apply to the sale or transfer of property if:

(1) lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(2) the corporate credit union has been advised by its counsel, in writing, that it has incurred as fiduciary a contingent or potential liability and the corporate credit union desires to relieve itself from liability. Such a sale or transfer may be made with the approval of the board of directors. In all such cases the corporate credit union shall reimburse the account in cash, at no loss to the account, upon the consummation of sale or transfer; or

(3) the sale or transfer is in accordance with paragraph (b)(8)(B) of K.A.R. 121-4-10 and amendments thereto.

(d) Except as provided in subsection (b) of K.A.R. 121-4-6, a corporate credit union shall not invest funds in an account by the purchase of shares, share certificates, or other obligations of the corporate credit union or its affiliates, unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(e) Any corporate credit union may sell assets in one account to itself as fiduciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(f) Any corporate credit union may make a loan to an account from the funds belonging to another account, when the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(g) Any corporate credit union may make a loan to an account and may take as security assets of the account, if the trust is a member of the corporate credit union and the transaction is fair to the account.

(h) A corporate credit union shall not permit any of its officers or employees to act as a co-

fiduciary with the corporate credit union in the administration of any account. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-9. Custody of investments. (a) Each corporate credit union shall keep the investments of each account separate from the assets of the corporate credit union, and shall place the investments in the joint custody or control of not less than two of the officers or employees of the corporate credit union designated for that purpose by the board of directors.

(b) Any corporate credit union may permit the investments of an account to be deposited elsewhere. In such cases, the corporate credit union shall obtain a written agreement from all depositories, other than the federal reserve bank.

(c) Each corporate credit union shall either:

(1) keep the investments of each account separate from those of all other accounts, except as provided in K.A.R. 121-4-10 and amendments thereto; or

(2) identify each investment as the property of the relevant account. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-10. Collective investment. (a) Funds held by a corporate credit union as fiduciary may be invested collectively:

(1) in a common trust fund maintained by the corporate credit union exclusively for the collective investment and reinvestment of moneys contributed to the common trust fund by the corporate credit union in its capacity as trustee; or

(2) in a fund consisting solely of assets of retirement, pension, profit-sharing, stock bonus or other trusts, if all such assets are only from retirement, pension, profit-sharing, stock bonus or other trusts that provide the corporate credit union with a certification of exemption from federal income tax under the internal revenue code.

(b) Collective investment funds, as defined in subsection (b) of K.A.R. 121-4-1, shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to in this regulation as the plan, which shall be approved by a resolution of the corporate credit union board of directors and filed with the administrator.

(A) The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the administrator as to the manner in

which the fund is to be operated. The plan shall include provisions relating to:

(i) the investment powers and the investment policy of the corporate credit union with respect to the fund;

(ii) the allocation of income, profits and losses;

(iii) the terms and conditions governing the admission or withdrawal of participations in the fund;

(iv) the auditing of accounts of the corporate credit union with respect to the fund;

(v) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;

(vi) the minimum frequency for valuation of assets of the fund;

(vii) the period following each such valuation date during which the valuation may be made which shall not exceed 10 business days, except in unusual circumstances.

(viii) the basis upon which the fund may be terminated; and

(ix) any other matters as may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used.

(C) The corporate credit union shall make a copy of the plan available for inspection at its principal office during all business hours, and upon request, shall furnish a copy of the plan to any person.

(2) Property held by a corporate credit union in its capacity as trustee of retirement, pension, profit-sharing, stock bonus, or other trusts may be invested in collective investment funds, subject to the provisions herein contained pertaining to such funds.

(3) All participants in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a corporate credit union as fiduciary in a participation in a collective investment fund is proper, the corporate credit union may consider the collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) At least once every three months, a corporate credit union administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets.

(A) A participation shall not be admitted to or withdrawn from the fund except:

(i) on the basis of the valuation; and

(ii) as of the valuation date.

(B) A participation shall not be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action has been entered in the fiduciary records of the corporate credit union on or before the valuation date and approved in the manner prescribed by the board of directors. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in assets which are not readily marketable, the corporate credit union may require a prior notice of withdrawal. The required notice shall not exceed one year.

(5)(A) At least once during each 12-month period, each corporate credit union administering a collective investment fund shall cause an adequate audit to be made of the collective investment fund by auditors responsible only to the supervisory committee of the corporate credit union. If the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(B) At least once during each 12-month period, each corporate credit union administering a collective investment fund shall prepare a financial report of the fund. This report shall be based upon the above audit and shall contain a list of investments in the fund showing:

(i) the cost and current market value of each investment;

(ii) a statement for the period since the previous report showing each purchase, and its cost;

(iii) a statement for the period since the previous report showing each sale, and its profit or loss, and any other investment changes;

(iv) income and disbursements; and

(v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In

addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the corporate credit union shall make reference to the performance of funds other than those administered by the corporate credit union.

(D) The corporate credit union shall furnish a copy of the financial report, or shall give notice that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may also be furnished to prospective beneficial owners. The corporate credit union shall bear the cost of printing and distributing these reports. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The corporate credit union may publicize the availability of the report for any fund described in paragraph (a)(1) of this regulation solely in connection with the promotion of the fiduciary services of the corporate credit union.

(E) Except as provided in this regulation, the corporate credit union shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When a participation is withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind; provided that all distributions as of any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(A) A corporate credit union shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided in this regulation, a corporate credit union shall not lend money to a fund, or sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including share and share certificate accounts, of the corporate credit union or any of its affiliates except that funds awaiting investments or distribution may be in-

vested in such share and share certificate accounts. Subject to all other provisions of this regulation, funds held by a corporate credit union as fiduciary for its own employees may be invested in a collective investment fund. A corporate credit union shall not make any loan on the security of a participation in a fund. If the corporate credit union acquires an interest in a participation in a fund due to a creditor relationship or other factors, the participation shall be withdrawn on the first date on which such a withdrawal can be effected. An unsecured advance to an account holding a participation shall not be deemed to constitute the acquisition of an interest by a corporate credit union until the next established valuation date.

(B) Any corporate credit union administering a collective investment fund may purchase from the fund, for its own account, any defaulted fixed income investment held by the fund, if in the judgment of the board of directors, the cost of segregating the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the corporate credit union elects to purchase the investment, it shall make the purchase at the investment's market value or at the sum of its cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) Except in the case of collective investment funds described in paragraph (a)(2) of this regulation, the following requirements shall apply.

(A) Funds or other property shall not be invested in a participation in a collective investment fund if as a result of the investment the participant would have an aggregate interest in excess of 10 percent of the then market value of the fund. In applying this limitation, if two or more accounts are created by the same person or persons, and at least one-half of the income or principal of each account is payable or attributable to the use of the same person or persons, those accounts shall be considered as one.

(B) An investment for a collective investment fund shall not be made in stocks, bonds or other obligations of any one person, firm or corporation if, as a result of such investment, the total amount invested in stocks, bonds, or other obligations issued or guaranteed by that person, firm or corporation would exceed 10 percent of the then market value of the fund. This limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaran-

teed by the United States as to principal and interest.

(C) Each corporate credit union administering a collective investment fund shall maintain, in cash and readily marketable investments, a percentage of the assets of the fund which is sufficient to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

(10) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the corporate credit union administering the fund.

(11)(A) Any corporate credit union may transfer up to five percent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account unless the transfer would cause the amount in the reserve account to exceed one percent of the outstanding principal amount of all mortgages held in the fund. The amount of such a reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(B) At the end of each accounting period, the corporate credit union shall charge all interest payments which are due but unpaid with respect to mortgages in the fund against the reserve account to the extent available and credited to income distributed to participants. If such interest payments are subsequently recovered by the fund, the reserve account shall be credited with the amount so recovered.

(12)(A) Each corporate credit union administering a collective investment fund shall have the exclusive management thereof.

(B) The corporate credit union may charge a fee for the management of the collective investment fund provided that the fractional part of the fee which is proportionate to the interest of each participant shall not, when added to any other compensations charged by a corporate credit union to a participant, exceed the total amount of compensation which would have been charged to the participant if no assets of the participant had been invested in a participation in the fund.

(C) The corporate credit union shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) A corporate credit union administering a collective investment fund shall not issue any cer-

tificate or other document evidencing a direct or indirect interest in such fund in any form.

(14) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the corporate credit union takes whatever action may be practicable in the circumstances to remedy the mistake.

(15) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost basis, rather than market value basis, for purposes of admissions and withdrawals, if the plan of operation satisfies each of the following conditions.

(A) Investments shall be limited to bonds, notes or other evidences of indebtedness which:

(i) are payable on demand, including variable amount notes; or

(ii) have a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a corporate credit union as fiduciary may be invested collectively, to the extent not prohibited by applicable federal or state law or regulation, as follows:

(1) Such funds or property may be invested in shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund."

(2) Such funds or property may be invested in the following:

(A) a single real estate loan;

(B) a direct obligation of the United States or an obligation fully guaranteed by the United States; or

(C) in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer. However, the corporate credit union shall not participate in such loans or obligations and shall not have an interest in any investment therein except in its capacity as fiduciary.

(3) Such funds or property may be invested in a common trust fund maintained by the corporate credit union for the collective investment of cash balances received or held by a corporate credit union in its capacity as trustee which the corporate credit union considers to be individually too small to be invested separately to advantage.

(A)(i) The total investment for such fund shall not exceed \$100,000.

(ii) The number of participating accounts shall be limited to 100.

(iii) No participating account may have an interest in the fund in excess of \$10,000.

(B) In applying these limitations, if two or more accounts are created by the same person or persons, and at least one-half of the income or principal of each account is presently payable or attributable to the use of the same person or persons, such accounts shall be considered as one.

(C) A corporate credit union shall not establish or operate a fund under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation.

(4) Such funds or property may be invested, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlers who are closely related, in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation.

(5) Such funds or property may be invested in such other manner as shall be approved in writing by the administrator. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

121-4-11. Location of trust documents.

(a) Each corporate credit union shall maintain all records required by this article and the original governing instruments establishing a fiduciary relationship with the corporate credit union at one site, which shall be either:

(1) the main office of the corporate credit union; or

(2) another site approved by the administrator.

(b) For purposes of examination, the corporate credit union shall make available original governing instruments and other records as deemed necessary by the administrator to complete an examination. (Authorized by and implementing K.S.A. 17-2214; effective Jan. 31, 1997.)

Article 5.—CREDIT UNION DETERIORATING CONDITION

121-5-1. Definitions. For the purpose of this article, the following definitions shall apply.

(a) “Appropriate state official” means the administrator of the Kansas department of credit unions.

(b) “Call report” means a statement of the financial condition of a credit union.

(c) “Credit union” means a credit union, as defined in K.S.A. 17-2231 and amendments thereto, that serves primarily natural person members.

(d) “FISCU” means federally insured state credit union.

(e) “Investment” means any security, obligation, account, or deposit. This term shall not include any loans to members.

(f)(1) “Member business loan” means any loan, line of credit, or letter of credit, including any unfunded commitments, in which the borrower uses the proceeds for commercial, corporate, other business investment property or venture, or agricultural purposes.

(2) “Member business loan” shall not include any of the following:

(A) Any loan fully secured by a lien on a one-family to four-family dwelling that is the member’s primary residence;

(B) any loan fully secured by shares in the credit union making the extension of credit or by deposits in other financial institutions;

(C) any loan or loans to a member or an associated member that, in total, are equal to less than \$50,000;

(D) any loan for which a federal or state agency or its political subdivision fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase in full; or

(E) any loan granted by a corporate credit union to another credit union. (Authorized by K.S.A. 17-2260; implementing K.S.A. 17-2206(d); effective July 7, 1997; amended, T-121-9-6-06, Sept. 6, 2006; amended Dec. 15, 2006.)

121-5-2. (Authorized by and implementing K.S.A. 1996 Supp. 17-2206(d); effective July 7,

1997; revoked, T-121-9-6-06, Sept. 6, 2006; revoked Dec. 15, 2006.)

121-5-3. Deteriorating condition. (a) A credit union shall be deemed to be in a “deteriorating condition,” as that term is used in K.S.A. 17-2206(d) and amendments thereto, if any of the following conditions is met:

(1) The credit union’s net worth category declines from well capitalized, adequately capitalized, or undercapitalized to significantly undercapitalized or to critically undercapitalized within a 12-month period.

(2) The credit union’s net worth category declines from significantly undercapitalized to critically undercapitalized within a 12-month period.

(3) The credit union’s net worth category declines to critically undercapitalized in a manner other than the manner specified in paragraphs (a)(1) and (2).

(b) The following federal regulations, as in effect on November 29, 2002, are hereby adopted by reference:

(1) 12 CFR 702.2, except subsections (b), (c), (h), (i), and (j);

(2) 12 CFR 702.101;

(3) 12 CFR 702.102(a), including table 1. This subsection includes the meanings of the terms “well capitalized,” “adequately capitalized,” “undercapitalized,” “significantly undercapitalized,” and “critically undercapitalized”;

(4) 12 CFR 702.103;

(5) 12 CFR 702.104, including table 2 but excluding the following text:

(A) In subsection (a), “(as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20)”;

(B) in subsection (b), “as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20”;

(C) subsection (c); and

(D) in subsection (g), “as defined in 12 CFR 723.1 or as approved under 12 CFR 723.20”;

(6) 12 CFR 702.105, including table 3;

(7) 12 CFR 702.106, including table 4;

(8) 12 CFR 702.107, including table 5; and

(9) 12 CFR 702.108(a) and (c)(1). (Authorized by K.S.A. 17-2260; implementing K.S.A. 17-2206; effective, T-121-9-6-06, Sept. 6, 2006; effective Dec. 15, 2006.)

121-5-4. Meaning of insolvent. (a) For purposes of this regulation, the following definitions shall apply:

(1) “Assets” shall mean all items owned by a credit union, including cash, loans, investments,

buildings, equipment, accounts receivable, and repossessed collateral.

(2) “Liabilities” shall mean all items owed by a credit union, including accounts payable, notes payable, and outstanding checks.

(b) A credit union shall be deemed to be “insolvent,” as that term is used in K.S.A. 17-2206(d) and K.S.A. 17-2230(b) and amendments thereto, if the total amount of the credit union’s shares exceeds the credit union’s assets after accounting for liabilities, unless all of the following conditions are met:

(1) The administrator of the Kansas department of credit unions determines that the facts that caused the deficient share-asset ratio no longer exist.

(2) Further depreciation of the share-asset ratio is not likely.

(3) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union is probable. (Authorized by K.S.A. 17-2260; implementing K.S.A. 2006 Supp. 17-2206 and K.S.A. 17-2230; effective Dec. 28, 2007.)

Article 6.—REPORTING PLACE OF BUSINESS FOR CREDIT UNIONS

121-6-1. Definitions. “Place of business” shall mean each location owned or leased by the credit union and each shared service center facility in which the credit union is an owner or a lessee, where employees of either the service center or credit union are located and where any of the following occurs:

(a) payments on shares are received;

(b) loan or share withdrawals are disbursed;

(c) loan applications are received, approved, or denied; or

(d) administrative offices of the credit union are located. (Authorized by and implementing K.S.A. 17-2206(a); effective Nov. 14, 1997.)

121-6-2. Reporting requirement. A credit union shall annually report each place of business, as defined in K.A.R. 121-6-1, to the administrator of the Kansas department of credit unions. The report shall be submitted on forms and in the manner prescribed by the administrator. (Authorized by and implementing K.S.A. 17-2206(a); effective Nov. 14, 1997.)

Article 7.—INCIDENTAL POWERS OF CREDIT UNIONS

121-7-1. Incidental powers. An “incidental powers” activity shall mean an activity that is

necessary to enable a credit union to carry on effectively the business for which the credit union is incorporated. An activity shall meet the definition of an incidental powers activity if the activity meets the following conditions:

(a) Is convenient or useful in carrying out the mission or business of the credit union in a manner that is consistent with the requirements of the Kansas credit union act;

(b) is the functional equivalent or logical outgrowth of any activity that is part of the mission or business of the credit union; and

(c) involves risks similar in nature to those risks already assumed as part of the business of credit unions. (Authorized by K.S.A. 17-2260; implementing K.S.A. 17-2204(l); effective Dec. 15, 2006.)

Article 8.—CREDIT UNION UNSAFE AND UNSOUND PRACTICES

121-8-1. Unsafe or unsound practice.

For the purpose of this article, “unsafe or unsound practice” shall mean any act or conduct by any credit union board member, employee, supervisory committee member, or credit committee member that meets any of the following conditions:

(a) Varies materially from any act or conduct prescribed by statute, regulation, any policy adopted by the credit union board, or any bylaw of the credit union;

(b) jeopardizes or causes the loss of the fidelity bond eligibility of an employee, director, officer, supervisory committee member, or credit committee member;

(c) jeopardizes or causes the loss of the credit union’s national credit union administration share insurance; or

(d) is contrary to or inconsistent with generally accepted standards of credit union operations and either results in or creates a substantial likelihood of resulting in an abnormal or unacceptable level of risk or loss to the credit union or a shareholder of the credit union. (Authorized by K.S.A. 17-2260; implementing K.S.A. 17-2206; effective, T-121-9-6-06, Sept. 6, 2006; effective Dec. 15, 2006.)

Article 9.—FOREIGN CREDIT UNIONS

121-9-1. Foreign credit union; requirements for approval. (a) Before doing business in this state, the board of directors of each foreign

credit union shall obtain the approval of the administrator of the Kansas department of credit unions.

(b) In order to apply for the administrator’s approval of a foreign credit union, the board of directors of the foreign credit union shall meet the following requirements:

(1) Describe on a form provided by the administrator how the group or groups who have a common bond of occupation or association or who reside within a well-defined neighborhood, community, or rural district are in compliance with K.S.A. 17-2205 and amendments thereto;

(2) provide documentation by which the administrator can evaluate the financial safety and soundness of the credit union, including the following:

(A) A statement from the credit union regulator in the state where the foreign credit union is chartered or incorporated that the credit union is in good standing in that state;

(B) a copy of the most current insurance certificate from the national credit union share insurance fund;

(C) a copy of the credit union’s most current balance sheet, the year-to-date income statement, and the most recent call report;

(D) a resolution from the foreign credit union’s board of directors stating that, for loans originating in Kansas, the foreign credit union will comply with Kansas statutes and regulations;

(E) a copy of the most recent regulatory examination, annual supervisory committee audit report, or equivalent examination or report from the credit union regulator in the state where the foreign credit union is chartered or incorporated; and

(F) a description of the services that the credit union intends to provide to its members; and

(3) if deemed necessary by the administrator to determine the credit union’s safety and soundness, undergo an examination by the Kansas department of credit unions. (Authorized by K.S.A. 17-2260; implementing K.S.A. 2006 Supp. 17-2223a; effective Dec. 28, 2007.)

Article 10.—CREDIT UNION ANNUAL AUDIT REQUIREMENTS

121-10-1. Definitions. For purposes of this article, the following definitions shall apply:

(a) “Agreed-upon procedures engagement” means an engagement to report on findings based

on specific agreed-upon procedures performed by an independent certified public accountant. The nature and extent of the procedures to be performed shall be agreed to and specified in a written agreement between the supervisory committee and the independent certified public accountant.

(b) “Audit” means a review of a credit union’s receipts, disbursements, income, assets, and liabilities.

(c) “Financial statement audit” and “opinion audit” mean the examination of a credit union’s financial statements performed by an independent certified public accountant for the purpose of expressing an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and results of operations of the credit union.

(d) “Independent certified public accountant” means a certified public accountant who meets the following requirements:

(1) Holds a permit to practice issued by the Kansas board of accountancy. The independent certified public accountant’s firm shall be registered with the Kansas board of accountancy; and

(2) is independent of the credit union as defined by the code of professional conduct issued by the American institute of certified public accountants.

(e) “Supervisory committee annual audit and internal control checklist” means the audit and list

of a credit union’s work procedures that a credit union submits to the Kansas department of credit unions on a form supplied by the department. (Authorized by and implementing K.S.A. 17-2211; effective Aug. 1, 2008.)

121-10-2. Credit union audit reporting requirements. (a) The supervisory committee of each new credit union shall be required to obtain an audit of that credit union as specified in subsection (b) at least once during the first year of operation.

(b) The supervisory committee of each established credit union shall be required to obtain, at least once during each calendar year, an audit of that credit union that covers the entire period of time that has elapsed since the previous audit. The type of audit required shall be one of the following, as applicable:

(1) For a credit union with total prior year-end assets of \$10 million or less, a supervisory committee annual audit and internal control checklist, an agreed-upon procedures engagement, or a financial statement audit;

(2) for a credit union with total prior year-end assets greater than \$10 million but less than \$250 million, an agreed-upon procedures engagement or a financial statement audit; or

(3) for a credit union with total prior year-end assets of \$250 million or greater, a financial statement audit. (Authorized by and implementing K.S.A. 17-2211; effective Aug. 1, 2008.)